(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In The Supreme Court Of The United States

PATRICIA H. POWELL,, *Petitioners*,

v.

ALLEGHANY CORP. Through John J. Burns Jr., Chr/ CEO; CHICAGO TITLE CORP., 1998 Spinoff, Through John Rau, P/CEO; CHICAGO TITLE & TRUST CO., Subsidiary, Through John Rau, Pres/CEO; CHICAGO TITLE INS CO., Subsidiary, Through John Rau, Pres/CEO; CHICAGO TITLE CO., Subsidiary, Through Wm Halvorsen, Jr., Pres,; MICHAEL E. DULLEA, Individually and As Ass't. Vice Pres. And Associate Regional Counsel Of CHICAGO TITLE INS. CO. and Vice Pres. of CHICAGO TITLE CO.; JANICE L. ANDERSON, Individually And As Escrow Officer of CHICAGO TITLE INS.CO./CHICAGO TITLE CO. and CONTROLLED ESCROW COMPANY, And DOES 1-50,

Defendants.

On Petition For Writ Of Certiorari To The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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62 pp

QUESTION PRESENTED

1. Whether the Ninth Circuit may ignore a Combined Complaint-RICO Statement documenting fraud, embezzlement of a federally insured lender, falsified financial reports, theft of owners' money in escrow accounts, subornation, perjury and extortion in pretense it re-litigates a 1991 action for specific performance in order to dismiss as 'res judicata.' What of due process.

2. Whether the Ninth Circuit is empowered to rule it did not, nor did its district court, violate the Supremacy Clause in subverting federal question, Racketeering and Corrupt Practices Act, in federal court to the State's primary rights to preclude suit.

3. Whether settlement for $50,000,000. in a consumer fraud class action (prosecuted by the Att'y. Gen.) precludes fraud and theft defense by Chicago Title Ins./Fidelity Nat'l. Fin.(CTI/FNF).

4. Whether the Ninth Circuit and Central District have discretion to impose LR7A-4 without violation of the Supremacy Clause and the federalism principle by creating an outcome determinative forum. Has the Cent. District discretion to convert FRCP 12(c) to FRCP 56 without notice to petitioner.

5. Whether Semtek *Int'l. Inc. v Lockheed Martin Corp., infra.* is extrapolated to Racketeer and Corrupt Practices Act given the Ninth Cir. bars petitioner from all federal courts as vexatious litigant under California law; specifically, may petitioner raise CTI/FNF's current racketeering activity in other federal courts.

PARTIES TO THE PROCEEDINGS

Plaintiff-petitioner: Patricia H. Powell, #133892, 111A Oliva Ct., Novato CA 94947 in propria persona. Admitted to practice before this Court 3 November 1999.

The named defendants are retained for continuity, but do not reflect corporate reorganization in sale/ merger of Chicago Title Corp. with Fidelity Nat'l. Fin. Corp. between 1999 and 2001. Apparently majority shareholders Burns and Kirby and their family trusts spun off the very profitable title insurers, Chicago, Ticor and Southwest into a new Chicago Title Corp. which was then "sold" to Fidelity Nat'l. Fin. for majority shareholder positions in Fidelity - a virus in a new host.

CTI/FNF claims 17911 Von Karman Ave., Ste. 300, Irvine CA 92614 as an address, but the Sec'y. of State reports corporate headquarters at 4050 Calle Real, Santa Barbara, CA 93110. Att'y. Sarni claims to represent all named defendants. It appears that the following are parties or successors-in-interest: Chicago Title Ins. Co./Fidelity Nat'l. Fin. Corp. headquartered at 4050 Calle Real, Santa Barbara CA 93110. William P. Foley, CEO, Fidelity Nat'l. Fin., is represented by corporate counsel at law offices in Irvine. W. Dean Cloud, individually and as VP of CTIns. Co., Mark J. Sarni and Mark Schiffman, corporate counsel, have offices at 17911 Von Karman Ave., Ste. 300, Irvine CA 92614.

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JURISDICTION OF THIS COURT

Jurisdiction is conferred by Art. III of the U.S. Constitution codified as 28 USC §1254, and Rule 13.

Running of 90 days, Rule 13, is unclear: On 27 November 2002 the Ninth Circuit clerk mailed notice judgment was entered "as of the date on the attached decision of the Court."; there was no decision by the Court sent to petitioner, FRAP 36. On 11 December 2002 petitioner mailed, USPS EXPRESS early morning delivery APPELLANT'S REQUEST FOR REHEARING which complained on its face there was no attached Opinion to rebut. This REQUEST was stamped filed 12 December 2002. On 13 December 2002 the title page of petitioner's REQUEST was returned stamped "Late Petition For Rehearing ORDER FILED" and stamped Dec 12 2002. After petitioner's second complaint the clerk sent a copy of the Ninth Circuit Memorandum, App:1, 3 January 2003. The Ninth Circuit did not reject the Request jurisdictionally nor accept it as timely postmarked.

Jurisdiction in the Ninth Circuit is conferred by 28 USC §1291. Jurisdiction in the Federal District Court-Central (Cal) is conferred by 28 USC §1331 and 18 USC §1964(c). App. H.

CONSTITUTIONAL, STATUTORY AND LEGISLATIVE HISTORY RELIED UPON

Federal authority relied upon: (1)the Constitution of the United States, Art. VI §2 and Amend. 14; (2) 28 USC § 1331, 2072; (3)18 USC §§1961, 1964(c), 1344, 1014 and 656, which are set out in Appendix H, 23a. Public Law 91-452, 84 STAT 941, 947, 922 and Congressional intent in enacting the Crime Control Act of 1970 is set out in the text as legislative history. Local Rule 27A et seq is quoted verbatim in the District Court's Order, Appendix E, 16a.

STATEMENT OF THE CASE

This case commenced in 1991 when petitioner defended against specific performance of an option offer, *Boone v Powell/Henricks*. Chicago Title Ins. Co. and its escrow company processed the escrow which is one subject of this petition. The second is necessitated by the Ninth Circuit's departure from the accepted and usual course of judicial proceedings and affirmed such a deviation by the Federal District Court, Central (Cal) as to call for an exercise of this Court's supervisory power. Petitioner contends the Ninth Cir. repeatedly violated the Supremacy Clause.

Petitioner filed timely Complaint in the Los Angeles Superior Court, NE-Pasadena and with consent amended it October 1995 to include civil RICO based on mail fraud and theft of proceeds generated in escrow by the forced conveyance. The complaint never survived law/motion which denied discovery of escrow documents, ignored civil RICO and under guise of preclusion by the *Boone* action for specific performance of an option dismissed as 'res judicata.' Petitioner's representation of the co-owner for her losses

of property and the money forthcoming was viewed as a sanctionable event and petitioner was fined $3,500 in law and motion. On appeal of both cases and sanction to the Second Appellate Dist. in Los Angeles, the appellate court affirmed in a 27-page rehash of facts of *Boone*, and faulted petitioner for re-litigation in dissatisfaction, App.A,2a. The Court sanctioned petitioner $71,000. for "frivolous appeals". The Opinion does not mention 'RICO', mail fraud or mention or fault the complaint. Petitioner's Request for Rehearing to the Ninth Circuit of the Record includes the Second App. Dist. Opinion.

Chicago Title Ins.Co./Fidelity Nat'l. Fin. (CTI/FNF) submitted for judicial notice its Disbursement Statement, App.26a, to the Sec. App. Dist. one day before oral argument, a document the court protected from discovery. The Disbursement Statement together with an accounting by CTI's attorneys, App.31a, clarified CTI's process of escrow. The letter dated April 30, 1996 states:

> "Prior to escrow actually closing, Chicago Title disbursed $11,988.16 pursuant to a levy from the San Diego Co. Marshall [sic] on January 14, 1992."

CTI's escrow was ordered to close 24 October 1991; Boones defaulted. On 19 November the court ordered its clerk to execute two grant deeds and escrow instructions and deposit into escrow. Although the requisite documents were in escrow 19 November 1991 CTI did not close until 9 January 1992, 51 days later. Boones had no money: in that 51 days CTI falsified financial reports crediting buyers with $12,600. The report fraudulently induced HomeFed Bank to approve/fund a purchase money loan, 18 USC §1014,

App.25a. But HomeFed's purchase money was under fiduciary agency until close of escrow; **allocation of purchase money to Boones' down payment, origination fees and costs of escrow before close of escrow was embezzlement of CTI's principal**, 18 USC §656, App. 25a.

Petitioner filed CV01-02546FMC, a 106-page Complaint-RICO Statement documenting fraud and embezzlement of a federally insured lender, 18 USC §§1014 1344, 656, 1341, App.23a, and state crimes of extortion, all predicate acts constituting racketeering activity for racketeering income. CTI/FNF filed ANSWER of 21 affirmative procedural defenses but no defense to federal crimes charged. See Record.

In a 10-minute scheduling conference, petitioner's only appearance, Judge Cooper ruled all discovery was barred, App. 7a, **admitted she had not read the complaint and issued ORDER GRANTING DEFENDANTS MOTION FOR JUDGMENT ON THE PLEADINGS ... DECLARATION OF PLAINTIFF VEXATIOUS LITIGANT** on 21,22 June 2001, App 8a. Judge Cooper deemed order granting judgment on the pleadings and declaration petitioner was a vexatious litigant as appropriate without oral argument. Since sanctions were not available under FRCP 11(b), App:15a, Judge Cooper substituted the exclusively Central Dist. LR 27A-4, App. 16a; it states:

> "Although nothing in this rule shall be construed to require that such a procedure be followed, the Court **may, at its discretion**, proceed by reference to the Vexatious litigants statute of the State of California, Cal Code Civ. Proc °§391-391.7. App. 17a.

The Ninth Circuit affirmed the order as "narrowly tailored to remedy Powell's particular abuses." App 2a, but is silent as to the 106-page RICO charges of bank fraud and embezzlement.

Judge Cooper entered Judgment 31 July 2001 in which she prohibited petitioner's filing now and forever further actions against named/unnamed defendants in any federal district court in the United States without judicial consent and $50,000 pursuant to LR 27A-4. App 5a.

The Ninth Circuit affirmed: petitioner's argument the Supremacy Clause elevated federal law in federal courts over state procedures was without merit and vexatious litigant was narrowly tailored to remedy Powell's particular abuses. App. 2a.

On 6 July 2001 petitioner filed oppositions and renewed motion to vacate, FRCP 59(a), 60(b)(6) for 6 August 2001 hearing. By Order dated 31 July 2002 Judge Cooper deemed those requests also appropriate for decision without oral argument and removed them from calendar. App. 20a.

On 20 July 2001 petitioner filed REQUEST FOR LEAVE TO FILE SUPPLEMENT TO COMPLAINT, intending to add Fidelity Nat'l. Fin. and attorney W. Dean Cloud charging unlawful debt collection practices of the $71,000 monetary sanction. By Order issued 25 July 2001 Judge Cooper rejected the REQUEST and returned it to petitioner: all new causes against these defendants required a $50,000 bond, App 20a.

The Ninth Cir. found no merit in petitioner's Supremacy Clause arguments, and reiterated the state's primary rights doctrine to affirm 'res judicata.' The due process argument lacked merit, App 3a.

Fraudulent processing of escrows was established in the **CTI/FNF settlement with the Cal. Att'y. Gen. in a consumer fraud class action for $50,000,000** including petitioner's two escrows. California's Ins. Com'r. fined CTI $235,000 in 1999 . App. 35, 37a.

CONTENTIONS AND ARGUMENT

Petitioner contends that this Court must curtail the Ninth Circuit's choice of falsified facts, irrelevant issues and state law over the Crime Control Act of 1970, its legislative history, Supreme Court directives, 18 USC §1961-1968 and the Complaint which raised them, Rule 10(a),(c).

The United States Constitution, Art VI, App. 23, mandates the supreme Law of the Land: Judges in every State shall be bound thereby, laws of the State notwithstanding. District courts are creatures of Congress, U.S. Const. Art.3 §1,2; inferior courts are given jurisdiction in enumerated cases, but it takes an act of Congress to confer it.

Congress implicitly conferred original jurisdiction of §1964(c), App 24a, to district courts of actions arising under 28 USC §1331, App 23a. This Court confirmed concurrent jurisdiction in 1990, *Tafflin v Levitt* 493 US 455, 110 SCt 792 (1990); California found concurrent jurisdiction of RICO

in 1985, *Cianci v Sup. Ct.* 40 Cal.3d 903, 907.

Title IX of the Organized Crime control Act of 1970, Pub. L. 91-452, 84 Stat. 941 added the Racketeer Influenced and Corrupt Organizations Act to Title 18, as amended, §1961-1968. Congress' purpose and findings are found at P.L. 91-452, 1 U.S. Cong. & Adm. News 1073 (1970):

> (1) Organized crime in the U.S. is a highly sophisticated, diversified, and widespread activity that drains billions of dollars from the economy annually by the unlawful and illegal use of force, fraud, and corruption;
>
> (2) organized crime derives a major part of its power through money obtained from illegal activities and other forms of social exploitation;
>
> (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and to subvert and corrupt democratic processes;,
>
> (4) organized crime in the United States weakens the stability of the economic system, harms investors, interferes with free competition, burdens interstate commerce and threatens domestic security;
>
> (5) and organized crime continues to grow because of defects in the evidence-gathering process inhibiting admissible evidence of unlawful acts of those engaged in organized crime.

The purpose of RICO is to eradicate organized crime by strengthening legal tools in the evidence- gathering process;

by establishing new penal prohibitions; and by extending standing to victims of racketeering to present otherwise unavailable evidence of racketeering income invested or used to infiltrate legitimate businesses. 1 US Cong. & Adm News 1970-68, p1073.PL 91-452; 84 STAT 922.

It is a snug fit. The Ninth Cir. ruled it without merit, App 3a. In *Quackenbush v Allstate Ins. Co.* 517 US 706, 713(1996) this Court adjudicated a related issue because it amounted to refusal to adjudicate the case in federal court. Here the district court surrenders jurisdiction of federal crimes to a state court which refused jurisdiction of RICO by supplanting 'res judicata', a relitigation of the specific performance action of 1991, although these defendants were not and could not have been parties.(Record, Request For Rehearing.) The Ninth Cir. disagreed, App 1a.

In *Howlett v Rose* 496 US 356, 374, 110 SCt 2430 (1990) this Court held that whether framed under preemption or obligation to assume jurisdiction over a federal cause, Florida's refusal to entertain one facet of §1983 violated the Supremacy Clause, id 375. Here, a federal district court is affirmed in refusal to hear charges of fraud and embezzlement of a federal lender.

Petitioner cited *Quackenbush v. Allstate Ins. Co.*, supra 716:

> "We have often acknowledged that federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress...Federal courts have a virtually unflagging obligation...to exercise the jurisdiction given them." Citation.

> When a federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction (citation); federal courts 'have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not'." Petitioner's Opening Brief quoted this passage.

The Ninth Circuit found this argument without merit, App 1a. In *Sedima, S.P.R.L. v Imrex Co.* 473 US 479, 498 (1985): this Court held that Congress' expansive language expressly admonishes that RICO is to be liberally construed to effectuate its remedial purposes. Congress intended to reach both legitimate and illegitimate enterprises: the former enjoy neither inherent incapacity for criminal activity nor immunity of its consequences. "If RICO has been applied in situations not expressly anticipated by Congress, it demonstrates breadth, not ambiguity." id 499. The Ninth ruled the point without merit, App 2a.

In *U.S. v Turkette* 452 US 576, 583, 101 SCT 2524 (1981) this Court disallows the very immunities the Dist. Court extended CTI/FNF: "The mere fact a given enterprise is favored with a legal existence does not prevent that enterprise from proceeding along a wholly illegal course of conduct", *id* 582. RICO both protects a legitimate enterprise from those who would unlawfully victimize it, and the public from those who would use it as a vehicle for unlawful activity, *id.* 2092. Here, both corporations and the customers of title insurance-escrow services deserve protection by the courts from racketeering, not obfuscation and prevention of

presentation of evidence-gathering by victims.

In *Felder v Casey* 487 US 131, 139(1988) this Court again ruled that 42 USC §1983 preempted use of state law. Here, California has no RICO laws: there is no preemption nor claim preclusion.

Petitioner contends this court must disabuse the Ninth Circuit of the notion courts can shuffle issues and charges to create grounds for 'res judicata'. Even if true, it is irrelevant given the applicability of dual sovereignty to RICO crimes.

In *Stewart Organizations v Ricoh Corp.*, 487 US 22, 26 fn3 (1988) this Court held that the presence of federal question (antitrust) could cut only in favor of federal law. In *US v Turkette*, 452 US 576, 587 (1981) this Court noted that war against organized crime entails prosecution of federal crimes that are also state crimes, §1962(a).

In *Montana v United States* 440 US 147,155, 99 SCt 970, 974 (1979) this Court set forth requirements to find collateral estoppel: Issues presented by that action were in substance the same as those resolved in the earlier action. Here, bank fraud by a title insurer-controlled escrow is not adjudicated in *Boone* - specific performance is irrelevant to racketeering activity by CTI/FNF, non parties to *Boone*.

In *Sea-Land Services, Inc. v Gaudet* 414 US 603, 679, 94 SCt 806, 812 (1974) this Court instructs that the final judgment on the merits is binding on every matter which was **offered and received**. *Id* 812. Neither Judge Cooper, Judge King nor the Ninth Circuit admit petitioner's RICO

suit was not received". California refused RICO jurisdiction: both courts constructed a re-litigation of *Boone* to avoid receiving evidence of bank fraud and embezzlement - RICO.

Even if claim preclusion were applicable, it is irrelevant. The dual sovereignty and double jeopardy of federal and state crimes were defined by this Court in *Abatte v U.S.*, 59 US 187,195, 79 SCt 666,671 (1959): The efficiency of federal law enforcement must suffer if the double jeopardy clause prevents successive state and federal prosecutions. From the nature of our government the same act may be an offence against the laws of the United States and also of a state and punishable by both, *id.*193.

Petitioner contends the Ninth Cir. affirms a use of FRCP 12(c) which so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of the Court's supervisory power, Rule 10.

FRCP 12(c) allows defendants to move for judgment on the pleadings after pleadings are closed, but if matters outside the pleadings are presented and not excluded, the motion is treated as Rule 56 summary judgment. Rule 56 requires a conclusion, after discovery, there is no genuine issue of material fact before summary dismissal.

The 106-page Complaint/RICO Statement (Record) pleads elements necessary to make a case for RICO; CTI/ FNF's Answer (Record) itemizes 23 affirmative defenses. These are the closed pleadings, FRCP 12(c). Judge Cooper shifted to primary rights, res judicata and vexatious litigant based on nine pages of false facts in rehash of *Boone*. Judge

Cooper ignored the RICO complaint which she admitted she did not read before tentatively granting defendants' motion. App 8a. Judge Cooper's Judgment is wholly outside the pleadings or any facts submitted. Judge Cooper's view of CCP §391. is far from California's, infra. The Ninth Cir. affirmed her Order and Judgment as "narrowly tailored" to remedy unspecified abuses by plaintiff. App.a1.

Petitioner contends the Ninth Circuit's rubber stamp of the vexatious litigant punishment is such a departure from the law of California and of FRCP 11(b) as to call for review by this Court.

In *Tokerud v CapitolBank Sacramento et al*, 38 Cal. App.4th 775, 777 (1995) California required (1) at least five actions within the past seven years that have been finally determined adversely to the plaintiff, (2) there is no reasonable probability he will prevail currently. Judge Cooper provides no rationale for punishment of petitioner and diverges from §391 even under her statement of facts. Nor does the Ninth Cir. specify "particular abuses" for which petitioner must be barred from all district courts now and forever. App 2a, 5a.

FRCP 11(b) provides for attorney sanction and this Court reiterated those elements in *Cooter&Gell v Hartmarx Corp.*, 496 US 384, 393 (1990). The central purpose of Rule 11 is to deter baseless filings in district courts, at 393. The signature of an attorney certifies he has the read the pleadings and to the best of his knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and warranted by existing law id 392. Petitioner did so through public knowledge and defendants'

submission of escrow documents for judicial notice, App 26a, but was denied benefit of discovery, App 7a.

Petitioner contends she is denied full and fair opportunity where every court denied requests for admission and document discovery then summarily dismissed RICO under re-constructed claims and facts. The Ninth Circuit twice approved.

Even in concurrence Justice Bader-Ginsburg wrote separately to emphasize a key point in application of §1738: A state court judgment generally is not entitled to full faith and credit unless it satisfies the Fourteenth Amendment's Due Process Clause (App 23a) (as to representation in class actions), *Matsushita Elec. Industrial v Epstein,* 516 US 367, 388 (1996).

It is well documented by the Record that neither the trial nor appellate courts of California ever mentioned RICO in *Powell v Alleghany Corp. et al.* It is also documented California prohibited discovery of incriminating escrow documents and procedures. The Sec.2dApp. Opinion creates 'res judicata' from *Boone*. But fraud and embezzlement of a federal lender was not discovered nor discoverable at that time. Judge Cooper ignored documented violations of 18 USC §§1344, 1014 and 656 (App 24a) by summarily imposing lifelong punishment on plaintiff.

Finally, petitioner contends that this Court's reasoning in *Semtek, infra*, controls preclusion and access to district courts not recognizing the Central District's local rule 27A-4 (App. 17a). In *Semtek Int'l., Corp. v Lockheed Martin Corp.*, 531 US___, 121 SCt 1021, 1028 (2001), a diversity case filed in California, this Court noted that if California

law left petitioner free to sue on his claim in Maryland even after the California statute of limitations had expired, the federal court's extinguishment of that right through Rule 41(b)'s mandated claim-preclusive effect, would seem to violate the Rules Enabling Act, *id* 1026. Moreover, Rule 41(b) would violate the federalism principle of *Erie R. Co. v Tompkins*, 304 US 64,78 by engendering substantial variations in outcomes between state and federal litigation which would likely influence the choice of a forum.

Here, to let stand Judge Cooper's unique view of CCP §391 would preclude even California from interpreting its own law. It would shut down all evidence-gathering of bank fraud, bank embezzlement, extortion, perjury, unlawful debt collection (Cal. P.C. §§115, 115.5, 118) now and forever regardless of CTI/FNF's continuing racketeering activity. And it foments forum-shopping.

CONCLUSION

Unquestionably RICO opens a can of worms: this giant conglomerate of CTI/FNF with its subsidiaries are wealthy, powerful and control a commanding share of the title insurance-escrow services market. The courts' temerity and aversion to accepting evidence of fraud and embezzlement of a federally insured lender emboldens CTI/FNF to pursue profitable racketeering more aggressively, knowing the evidence gathered by petitioner is barred in the United States federal courts and precluded in the state courts.

The Enron-Global Crossing corporate scandals defrauded their investors. Chicago Title Corporation and Fidelity National Fin. Corp. nickel-and-dime every party to real

property conveyance as evidenced by their choice of settlement of the $50,000,000 fraud class action prosecuted by California's Att'y. General App 35a, 37a. CTI/FNF has distinct advantages over Enron: every facet of real property conveyance is secret and mysteriously prorated - costs, expenses, fees, liens and taxes. The Disbursement and Sellers' Settlement Statements are, as here, undocumented.

Government prosecutions for fraud engendering $50,000,000 fines are easily recoverable in the next round of fees, as was CTI's $235,000 fine in 1999, App 37a. They do not relieve the victim of financial ruin, as here, more than $300,000 loss.

Only this Court can effectuate prosecution of officers and attorneys who direct these corporations for what they are - racketeers preying on individual buyers and sellers of homes.

Dated: 22 February 2003

Respectfully submitted: _____

Patricia H. Powell #133893
Attorney for Patricia H. Powell

APPENDIX

APPENDIX A - MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DATED AND FILED N0V 27, 2002

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

No. 01-56599

Patricia H. Powell,
Plaintiff-Appellant

v.

Alleghany Corp., et al
Defendants-Appellees

Appeal from the United States District Court
for the Central District of California

Submitted November 18, 2002
Filed November 27, 2002

Before REINHARDT, RYMER and SILVERMAN, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3

** this Panel unanimously finds this case suitable for decision without oral argument See Fed. R. App. P. 34(a)2. Accordingly, appellant's motion for oral argument is denied.

Patricia H. Powell appeals the district court's order dismissing her action alleging violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) by insurance and title companies involved in the court-ordered escrow and sale of Powell's property. We have jurisdiction pursuant to 28 USC §1291. We review de novo a district court's dismissal based on res judicata, *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997), and we affirm.

Powell's claims have been the subject of two prior state court actions[1], as well as a federal complaint which was the subject of an appeal before this Court.[2] The district court correctly determined that Powell's complaint was barred by principles of res judicata: the claim relates to the same primary right asserted in the prior actions; the prior judgments were final and on the merits; and the plaintiff was party or in privity with a party in the prior actions. See *Monterey Plaza Hotel Ltd. P'ship v. Local 483 of the Hotel Employees and Rest. Employees Union, AFL-CIO,* 215 F.3d 923, 928 (9th Cir. 2000).

Powell's argument that granting preclusive effect to a state court decision violates the Supremacy Clause is without

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1. The two prior California state court actions were *Powell v Alleghany Corp.*, Case No. GC013802, and *Henricks v Alleghany Corp.*, Case No. GC016003

2. *Powell v Alleghany Corp,; et al*, No.97-56621, 188 F3d 514 (9th Cir. 1999) (unpublished memorandum disposition).

merit, See 28 USC 1738; see also *Takahashi v. Bd. of Trustees of Livingston*, 783 F2d 848, 850 (9th Cir.), *cert. denied*, 476 US 1182 (1986).

The district court did not abuse its discretion in designating Powell as a vexatious litigant because Powell received adequate notice to oppose the motion, the district court recounted and made substantive findings as to the frivolous nature of Powell's filings, and the order was narrowly tailored to remedy Powell's particular abuses. *See O'Loughlin v Doe*, 920 F2d 614, 917 (9th Cir.1990). We have considered the remainder of Powell's contentions and find they lack merit.

AFFIRMED.

APPENDIX B - JUDGMENT OF UNITED STATES DISTRICT COURT DATED 2 AUGUST 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 01-02546FMC(CTx)

Patricia H. Powell,

Plaintiff,

v.

ALLEGHANY CORP. Through John J. Burns Jr., Chr/ CEO; CHICAGO TITLE CORP., 1998 Spinoff, Through John Rau, P/CEO; CHICAGO TITLE & TRUST CO., Subsidiary, Through John Rau, Pres/CEO; CHICAGO TITLE INS CO., Subsidiary, Through John Rau, Pres/ CEO; CHICAGO TITLE CO., Subsidiary, Through Wm Halvorsen, Jr., Pres,; MICHAEL E. DULLEA, Individually and As Ass't. Vice Pres. And Associate Regional Counsel Of CHICAGO TITLE INS. CO. and Vice Pres. of CHICAGO TITLE CO.; JANICE L. ANDERSON, Individually And As Escrow Officer of CHICAGO TITLE INS.CO./CHICAGO TITLE CO. and CONTROLLED ESCROW COMPANY, And DOES 1-50,

Defendants.

JUDGMENT

Upon review of Defendants' motion for judgment on the pleadings and motion for monetary sanctions and request for Plaintiff Patricia H. Powell to be declared a vexatious litigant, and upon review of the court orders issued as a result of said motion, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment in this matter shall be in favor of all Defendants, named or unnamed, and against Plaintiff Patricia H. Powell. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants; shall not recover any monetary sanctions against Plaintiff Patricia H. Powell but that Plaintiff Patricia H. Powell is hereafter to be declared a vexatious litigant as to each of the named Defendants in this action and as to any party in privity with said named Defendants.

Accordingly, Plaintiff Patricia H. Powell shall now and forever be required to seek and obtain an order of the court before filing any further actions in any Federal Court of the United States against any of the named Defendants or any party in privity with the named Defendants. Said order shall be made by the court only upon a satisfactory showing by Patricia H. Powell to the court which includes a certification that the proposed action is brought in good faith, that the issues to be addressed in the proposed action have not been raised in a prior lawsuit, and that security in the amount of $50,000.00 shall be posted before the action is to be filed.

Dated: 7/3/01

FLORENCE-MARIE COOPER.
Judge, UNITED STATES
DISTRICT COURT

APPENDIX C - ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. CV-01-02546FMC

Filed July 25, 2001

IT IS HEREBY ORDERED:

The document is NOT to be filed, but instead REJECTED, and is ORDERED returned to *counsel. Counsel shall immediately notify, in writing, all parties previously served with the attached documents that said documents have not been filed with the court.

No new causes of action against these Defs w/o posting a bond.

Dated: 7/24/01

Florence-Marie Cooper
U.S. DISTRICT JUDGE

* THE TERM "COUNSEL" AS USED HEREIN ALSO INCLUDES ANY PRO SE PARTY. See Local Rule 2.9.3

APPENDIX D - CIVIL MINUTES - GENERAL
ENTERED 12 JUNE 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

No. CV 01-2546FMC(CTx) June 11, 2001
Title: Patricia H. Powell v Alleghany Corp., et al.

PRESENT:
THE HONORABLE FLORENCE-MARIE COOPER, JUDGE

Alicia Mason	Not present
Courtroom clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF	ATTORNEYS PRESENT FOR DEFENDANTS
Patricia Powell	Mark J. Sarni

Proceedings: (In chambers)

SCHEDULING CONFERENCE

The matter came on for scheduling conference. After discussion with counsel for both parties, the Court ordered a stay of discovery until after the Court has had an opportunity to rule on the defendants' Motion for Judgment on the Pleadings, presently set for hearing on June 25, 2001. If the motion is denied, the following schedule is established:

Discovery cut off:	10/03/01
Motion cut off	12/10/01
Pre-Trial Conference	1/14/02 at 9:00 am
Jury Trial	2/20/02 at 9:00 am

APPENDIX E: UNITED STATES DISTRICT COURT ENTERED 22 JUNE 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 01-02546FMC(CTx)

Patricia Powell,

Plaintiff

v.

Alleghany Corporation, et al.,

Defendants

ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS; ORDER DENYING DEFENDANTS' MOTION FOR SANCTIONS; ORDER GRANTING DEFENDANTS' REQUEST TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT; ORDER REMOVING HEARING FROM COURT'S CALENDAR

This matter is before the Court on Defendants' Motion for Judgment on the Pleadings pursuant to Fed.R.Civ.P. 12(c), Defendants' Motion for Sanctions pursuant to Fed.R.Civ.P. 11 and Local Rules 27 and to Declare Plaintiff a Vexatious Litigant pursuant to Local Rule 27A. The Court deems this matter appropriate for decision without oral argument. See

Fed.R.Civ.P. 78; Local Rule 7.11. Accordingly, the

hearing set for June 25, 2001, is removed from the Court's calendar. For the reasons stated herein, the Court hereby GRANTS Defendants' Motion for Judgment on the Pleadings, DENIES Defendants' Motion for Sanctions, and GRANTS defendants' request to declare Plaintiff a vexatious litigant.

I. Background

Defendants argue that the present action is the Plaintiff's fourth action regarding the same set of facts, and, as such, Plaintiff's claims are barred by the doctrine of *res judicata*. The record bears out that the subject matter of the present action concerns past litigation that is, at its inception, over a decade old. Defendants have filed copies of pleadings from the litigation between the parties, and the Court hereby takes judicial notice of these filings.[1] To the extent the Court can discern Plaintiff's arguments in opposition to the Motion to Dismiss, Plaintiff contends that dismissal is improper because the state court actions were not addressed on the merits, that the state Court had no authority to address her federal claim under The Racketeer Influenced and Corrupt Organizations Act ("RICO"), that she had no opportunity to be heard regarding her RICO claim, and that dismissal is inappropriate under Fed. R. Civ. P. 12(c).

In 1988, Frank and Sherrie Boone leased a home from Plaintiff Powell and her sister, Barbara Hendricks[sic]. The

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1. The Court may take judicial notice of pleadings of another court when those pleadings contain adjudicative facts relevant to the issue at hand. See Fed.R.Evid. 201; *Papai v*

lease agreement contained an *Harbor Tug&Barge Co.*, 67 F3d 203, 207 n.5 (9th Cir. 1995; *reversed on other grounds,* 520 US 548, 117 S.CT. 1535 (1997). option to purchase the home. When the Boones attempted to exercise their option to purchase the home, Plaintiff refused to honor the option and denied the existence of such an option. In 1989, the Boones filed an action in the San Diego County Superior Court to enforce the option agreement and to compel the sale of the home. A trial on the matter was held in 1991, and the jury returned a verdict in favor of the Boones, specifically finding that Plaintiff had committed fraud in denying the existence of an option to purchase the home. The Court ordered the sale of the home to the Boones.

On October 3, the Court ordered escrow on the home to be opened with Chicago Title, which is a Defendant in this action. When Plaintiff and Hendricks[sic] refused to sign documents necessary to complete the transfer of ownership of the home, the court appointed the clerk of court as an elisor with the power to sign escrow papers and to grant deeds on behalf of Plaintiff and Hendricks. On January 9, 1992, escrow was closed and the home was transferred to the Boones.

On June 1, 1992, Plaintiff appealed the court's order. On September 10, 1993, the court of appeal issued an opinion affirming the verdict, the judgment, and the court's award of sanctions against Plaintiff. Over one year later, Plaintiff filed a complaint against Defendants and others in the Los Angeles Superior Court, basing her claims on their actions in carrying out the court-ordered escrow. On September 12, 1995, the Superior Court sustained Defendants' demurrer without leave to amend as to the

Chicago Title Defendants. Plaintiff was granted leave to amend her claims as to other entities named in the action. When Plaintiff filed her amended complaint, however, she added a claim under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO").[2]The Superior Court concluded that no facts supported this cause of action and sustained Chicago Title's second demurrer without leave to amend.

Approximately one year thereafter, Plaintiff, as counsel, filed the same lawsuit, in the same court, against the same defendants, in her sister's name. Compare Request for Judicial Notice, Exh. C, with Request for Judicial Notice, Exh. D. The Superior Court sustained Defendants' demurrer without leave to amend. Plaintiff was sanctioned for her conduct.

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2. Contrary to the arguments raised by Plaintiff in her Opposition to the Motion to Dismiss, state courts have the authority to adjudicate claims under RICO such as the one she asserted in the earlier state court actions. See *Tafflin v Levitt*, 493 US 455, 458, 110 SCt 792 (1990) (holding that state courts have concurrent jurisdiction over federal civil RICO claims). Nor does the court find compelling Plaintiff's claim that her due process rights were violated because the court did not permit oral argument as to her RICO claim. Importantly, the court sustained the first demurrer without leave to amend; therefore, Plaintiff was not entitled to amend the complaint to assert her RICO claim. Moreover, there is no due process right to oral argument. *Federal Communications Commission vs. WJR,* 337 US 265, 69 SCt 1097 (1949)

Undeterred, Plaintiff filed an action against the Defendants in the District Court for the Central District of California in June 1997. This action again involved allegations concerning Defendants' involvement in the 1991-1992 court-ordered escrow. See Request for Judicial Notice, Exh E. Judgment against the Plaintiff was entered on September 25, 1997. See *Powell v. Alleghany Corp.*, CV97-4312GHK (AJWx). Memorandum and Order (Sept. 25. 1997), attached to Defendants' Request for Judicial Notice. In dismissing the claims filed in that action, the court concluded that Plaintiff's claims were barred by the doctrine of res judicata. The court held that the general demurrer issued by the superior court constituted a judgment on the merits, that the same parties were involved in the state court actions,[3] and that the actions involved the same cause of action as the state court actions.[4]

II Res Judicata

The Court may properly consider the issue of res judicata where, as here, it is presented in a motion for judgment on the pleadings pursuant to Fed. R. of P. 12(c). See *Owens v Kaiser Foundation Health Plan, Inc.,* 244 F3d 708, 711, 715 (9th Cir. 2001) (affirming district court's granting of judgment on the pleadings in favor of defendants based on the doctrine of res judicata).

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3. The one party that was not involved in the earlier actions was found to be in privity with the defendants in the earlier actions.

4. Specifically, the court held that the same "primary right" was implicated in the earlier actions: the right to proper execution of the court's order regarding the escrow of the sale of the home.

Federal courts must give a state court judgment the same preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered. *See Migra v Warren City School Dist. Bd. of Ed.*, 465 US 75, 104 SCt 892 (1984). Under California law, res judicata, or claim preclusion, bars relitigation of a claim when a prior action adjudicated 1) the same claim, 2) resulted in a final judgment on the merits, and 3) the party against whom the claim is asserted was a party to or was in privity with a party to the prior action. *Cal State Auto Ins. Ass'n v Superior Court*, 50 Cal.3d 658, 268 Cal. Rptr. 284 (1990); *Clemmer v Hartford Ins. Co.* 22 Cal.3d 865, 151 Cal. Rptr. 285 (1978); *Victa v Merle Norman Cosmetics, Inc.*, 19 Cal.App. 4th 454, 24 Cal. Rptr. 2d 117 (1994).

A. The Same Claim

California follows the "primary right" theory of what constitutes a cause of action. Under this theory, a claim, or "cause of action" is based on the harm suffered, not the particular legal theory asserted by the litigant. *Peiser v Mettler*, 50 Cal.2d 594 (1958). The primary rights theory provides that a "cause of action" is comprised of a "primary right" of the plaintiff, a corresponding "primary duty" of the defendant, and a wrongful act by the defendant constituting a breach of that duty. *Crowley v Katleman*, 8 Cal.4th 666, 34 Cal. Rptr. 2d 386 (1994). The violation of a single primary right gives rise to but a single cause of action. *Id.* As far as its content is concerned, the primary right is simply the plaintiff's right to be free from the particular injury suffered. *Id*

"Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief." *Id.* at 668-69. The primary right theory applies when a previous action has resulted in a final judgment on the merits and a defendant in a second action asserts that the second action is precluded under the principles of *res judicata. Id.*

Upon review of the complaint filed in the present action, the court concurs with Judge King's observation in the previous federal action that the same "primary right" was implicated in all the earlier actions: the right to proper execution of the court's order regarding the escrow of the sale of the home. Therefore, because Plaintiff's claims in the present action address the same primary right that was at issue in the three previous actions, the "same claim" element of *res judicata* is met in this action.

B. Final Judgment on the Merits

The Court sustained Defendants' demurrers in the state court actions. "In California, a judgment entered after the sustaining of a general demurrer is a judgment on the merits, and, to the extent that it adjudicates that the facts alleged do not establish a cause of action, it will bar a second action on the same facts." *Palomar Mobilehome Park Ass'n v City of San Marcos,* 989 F2d 362 (9th Cir. 1993) (citing *Crowley v Modern Faucet Mfg. Co.,* 44 Cal 2d 321, 34 [sic] (1955)). Accordingly, Plaintiff's claims in the state court actions resulted in a final judgment on merits.

C. Same Parties or Those in Privity

This court observes, as did Judge King, that the parties to the present action are the same parties or those in privity with the parties in the state court actions. The present case names John Rau as a Defendant; Rau was not a defendant in the state court action. However, as Judge King noted, John Rau, as a newly appointed president of Chicago Title Company, is in privity with the defendants in the state court actions. Plaintiff also adds a new entity to the present action "Chicago Title Corporation, 1998 Spinoff, through John Rau, President and CEO." This entity, as described by Plaintiff, is in privity with the Chicago Title Defendants in the state court actions. Therefore, Plaintiff's claims are asserted against the same parties or those in privity with the same parties against whom the claims were asserted in the state court actions.

Because all the elements of *res judicata* have been met, Plaintiff is barred from relitigating her claims by virtue of the state court judgment. Accordingly, the Court hereby **GRANTS** defendants' Motion for Judgment on the Pleadings.

III. Motion for Sanctions

Defendants move for sanctions pursuant to Fed.R. Civ.P. 11 and Local Rules 27 and 27A. Sanctions are not proper under Rule 11 because Defendants have failed to comply with the notice provisions of that Rule. An often ignored provision of Rule 11 states that a motion for sanctions pursuant to Rule 11 must be served on the offending party twenty-one days before it is filed with the Court. Fed. R.

Civ. P. 11(c)(1)(A). this provision is meant to give the offending party the opportunity to voluntarily withdraw the paper, claim, defense, contention. allegation. or denial that is alleged to have violated Rule 11. *Id.* Because Defendants have not complied with the requirements for bringing a motion for sanctions pursuant to Rule 11 cannot be made.

Defendants also move for sanctions pursuant to Local Rules 27 and 27A. Local Rule 27A concerns vexatious litigant and is addressed separately, below. Local Rule 27 authorizes the Court to impose monetary sanctions if the Court finds a violation of any of the Local Rules. Defendants have pointed to no Local Rule that Plaintiff has violated. Therefore, the Court denies Defendants' Motion for Sanctions pursuant to Local Rule 27.

IV. Vexatious Litigants

Defendants have moved to have Plaintiff declared a vexatious litigant. Local Rule 27A addresses vexatious litigants:

> 27A.1 POLICY - It is the policy of the Court to discourage vexatious litigation and to provide persons who are subjected tovexatious litigation with security against the costs of defending against such litigation and appropriate orders to control such litigation....
>
> 27A.2 ORDERS FOR SECURITY AND CONTROL On its own motion or on motion of a party, after opportunity to be heard, the Court may, at any time, order a party to give security in such amount as the

Court determines to be appropriate to secure the payment of any costs, sanctions or other amounts which may be awarded against a vexatious litigant, and may make such other orders as appropriate to control the conduct of a vexatious litigant. Such orders may include, without limitation, a directive to the Clerk not to accept further filings from the litigant without payment of normal filing fees and/ or without ritten authorization from a judge of the Court or a Magistrate Judge, issued upon such showing of the evidence supporting the claim as the judge may require.

27A.3 FINDINGS - Any order issued under Rule 27A.2 shall be based on a finding that the litigant to whom the order is issued has abused the Court's process and is likely to continue such abuse, unless protective measures are taken.

27A.4 REFERENCE TO STATE STATUTE - Although nothing in this rule shall be construed to require that such a procedure be followed, the Court may, at its discretion, proceed by reference to the Vexatious Litigants statute of the State of California, Cal. Code Civ. Proc. §391-391.7.

Defendants suggest that the Court should make reference to California statutory law regarding vexatious litigants. Specifically, defendants suggest application of the definition of "vexatious litigant" found in Cal. Code Civ. Proc. § 391(b)(2), which provides:

(b) "Vexatious litigant" means a person who does any of the following:

(2) after a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom litigation was finally determined.

Cal.Code Civ. Proc. § 391(b);see also *First Western Development Corp. v Superior Court (Andrisani)*, 212 Cal. App.3d 860, 261 Cal. Rptr, 116 (1989) (holding that an unsuccessful defendant in unlawful detainer proceeding who filed five suits against opposing party, its officer, and attorneys, three of which attempted to relitigate issues previously raised in unlawful detainer action, was "vexatious litigant" within meaning of § 391(b)(2) and therefore, defendant could be required to post appropriate bond in pending and future suits).

The Court finds Plaintiff to be a vexatious litigant. She has filed meritless claims against the same Defendants in four separate actions, all four of these actions were based on the same primary right as defined by California Law on res judicata, and all four were based on the same underlying factual allegations: the 1991-1992 court-ordered escrow. The Defendants have incurred over $25,000 in legal expenses defending these meritless claims. Previous monetary sanctions have been ineffective in deferring Plaintiff's frivolous filings, and Plaintiff appears to be unable to pay these sanctions.

Accordingly, Plaintiff is hereby ordered to seek leave of the Court before filings complaint against any of the Defendants named in this action (or any party in privity with the Defendants) based on any of all of the facts alleged in the complaint, including any claims based on the 1991-1992 court-ordered escrow. Plaintiff must certify that the claims she wishes to present are brought in good faith and that they have not been raised in any previous actions. Plaintiff must also post security in the amount of $50,000 before filing such a complaint.

The clerk of the court is directed to reject Plaintiff's filings absent compliance with the requirements of this order.

V. Conclusion

The Court hereby grants Defendants' Motion for Judgment on the Pleadings. Defendants shall file, within ten days of the entry of this Order, a proposed judgment consistent with this order. Defendants' Motion for Sanctions is denied. Plaintiff has been declared a vexatious litigant based on the record as outlined in this order. she must comply with the requirements outlined in the previous section before she will be permitted to file any future claims against these Defendants.

IT IS SO ORDERED.
DATED this 21st day of June, 2001.

Signed: Florence-Marie Cooper
Judge, UNITED STATES
DISTRICT COURT

APPENDIX F: CIVIL MINUTES-GENERAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Case No. CV 01-2546 FMC(CTx) Date: July 31, 2001

Title: PATRICIA H. POWELL V ALLEGHANY CORP. etal

PRESENT:
THE HONORABLE FLORENCE-
MARIE COOPER, JUDGE

Alicia Mason	Not present
Courtroom Clerk	Court Reporter
ATTORNEYS PRESENT	ATTORNEYS PRESENT
FOR PLAINTIFFS	FOR DEFENDANTS
Not present	Not present

PROCEEDINGS: ORDER DENYING PLAINTIFF'S MOTION TO AMEND JUDGMENT (In chambers)

This matter is before the Court on Plaintiff's Opposition to Defendants' Proposed Judgment and Motion to Amend Judgment or Alter the Judgment. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78: Local Rule 7.11. Accordingly, the hearing set for August 6. 2001, is removed from the Court's calendar.

In substance, Plaintiff's Opposition and Motion merely set forth arguments that were raised in opposition to Defendant's [sic] Motion for Judgment on the Pleadings. Accordingly, the Court hereby DENIES Plaintiff's Motion to Amendment [sic] Judgment or Alter the judgment.

Plaintiff also requests that the Court reconsider its Order declaring her a vexatious litigant. For the reasons stated in the Court's June 21, 2001, Order, Plaintiff has properly been declared a vexatious litigant. Accordingly, the Court DENIES Plaintiff's request.

Initials of clerk:

ENTERED ON ICMS Aug - 2001

APPENDIX G: ORDER

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: PATRICIA H. POWELL	No. 01-71383
PATRICIA H POWELL, Petitioner,	DC#CV-01-2546FMC Central District of California (Los Angeles)

v

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

Respondent,

ORDER

ALLEGHANY CORP., et al.,

Real Parties in Interest.

Before: REINHARDT, GRABER and BERZON, Circuit Judges

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. United States Dist. Court,* 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is **DENIED**.

APPENDIX H: CONSTITUTIONAL, STATUTORY AUTHORITY RELIED UPON

CONSTITUTION OF THE UNITED STATES

ART. VI §2: This Constitution, and the laws of the United States which shall be made in pursuance thereof'; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

AMENDMENT XIV, §1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 USC § 1331

Federal Question: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 USC § 2072

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district

courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

18 USC §1964(c)

Any person injured in his business or property by reason of a violation of §1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities....

18 USC §1961

Definitions: As used in this chapter (§1961 et seq) -

(1) "racketeering activity" means

(B) any act which is indictable under any of the following provisions: ... §1341 relating to mail fraud; ...§1344 relating to financial institution fraud...

18 USC §1344

Whoever knowingly executes, or attempts to execute, a scheme or artifice-

(1) to defraud a financial institution; or

(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody

or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises, shall be fined not more that $1,000,000 or imprisoned not more than 30 years, or both.

18 USC §1014

Loan and credit applications generally...

Whoever knowingly makes any false statements or report, or willfully overvalues any land, property or security for the purpose of influencing in any way the action of ...a federal reserve bank...any institution the accounts of which are insured by the Federal Deposit Insurance Corp., the Office of Thrift Management, ... the Resolution Trust Corp....upon any application, advance, discount, purchase, ...committment or loan ...shall be fined not more that $1,000,000 or imprisoned not more than 30 years or both.

18 USC §656

Whoever being an officer, director, agent...or connected in any capacity with any Federal Reserve bank...national bank, insured bank...embezzles, abstracts, purloins or willfully misapplies any or the moneys, funds or credits of such bank... or any moneys, funds. assets or securities intrusted to the custody or care of such... agency, or organization, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both; ....

APPENDIX I: DISBURSEMENT STATEMENT GRANTED JUDICIAL NOTICE BY THE CALIFORNIA COURT OF APPEALS

CIVIL DOCKET NO. BO98612, B102933, B103129

CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIV. FOUR

PATRICIA H. POWELL,

Plaintiff and Petitioner,
vs.

ALLEGHENY CORP. THROUGH RICHARD P TOFT, SR. VP; CHICAGO TITLE&TRUST CO. SUBSIDIARY CORPORATION THROUGH RICHARD P. TOFT. CHR. PRES.CEO AND RICHARD L. POLLAY, V. CHR; CHICAGO TITLE INS. CO., SECOND TIER SUBSIDIARY; THROUGH RICHARD P. TOFT. CHR. CEO AND RICHARD L. POLLAY, DIRECTOR, PRES., COO; MICHAEL E. DULLEA, INDIVIDUALLY AND AS VP/ CORPORATE COUNSEL CHICAGO TITLE INS. CO. JANICE L/ ANDERSON, INDIVIDUALLY AND AS ESCROW OFFICER, CHICAGO TITLE INS. CO.,

Defendants and Respondents.
On Appeal from an Order Sustaining Demurrer and Dismissing Case; Hon. J. Michael Byrne, Los Angeles Superior Court, Northeast District
Case No. GC013802

DECLARATION BARBARA L. PACE REGARDING APPELLANT'S' FINANCIAL ABILITY TO PAY

DECLARATION OF BARBARA L. PACE

1. I am an Escrow Officer employed by Chicago Title Company. The following facts are based upon my personal knowledge, and if called as a witness, I could competently testify to these facts.

2. On or about January 9, 1992, a sale and escrow of the residence located at 1062 Angelus Avenue, San Diego, California, was completed between Frank Boone Jr. and Sherrie F. Boone, as buyers, and Patricia H. Powell and Barbara J. Henricks, as sellers

3. At close of escrow, the sellers' proceeds were $54,742.42 (see attached Exhibit "A").

4. On or about January 9, 1992, a Notice of Levy under Writ of Execution (Money Judgment) was served by the San Diego county Marshall[]sic] on Chicago Title (see attached Exhibit "B"). On or about January 14, 1992, pursuant to the Notice of Levy, $11,988.06 was disbursed to the San Diego County Marshall[sic] from the sellers' escrow funds. (See attached exh. C)

5. On or about January 14. 1992, a check in the amount of $42,754.36, representing the total remaining funds in escrow, was transmitted to Ms. Powell and Ms. Henricks (see attached Exh. D).

6. On or about January 26, 1992, Ms. Powell returned the settlement check in the amount of $42,754.36 with a letter stating that the sellers have been bound to no contract of sale ofthe property and have conveyed no title until ordered

by the highest reviewing court and thus are not entitled to the sales proceeds (see attached exhibit "D").

7. On or about April 26, 1992, Ms. Powell and Ms. Henricks requested that $12,244.55 of the remaining funds be disbursed to Ms. Powell (see attached exh.F) On or about May 19, 1992, a check in the amount of $12,244.55 was transmitted to Ms. Powell pursuant to those instructions (see attached Exhibit "G").

8. On or about July 28, 1992, pursuant to a Notice of Levy under Writ of Execution (Money Judgment) served by the San Diego County Marshall[sic} (see attached Exh. "H") another $10,003.50 was disbursed to the San Diego County Marshall[sic] from the remaining escrow funds (see attached Exh. "I")

9. On or about April 17, 1996, Judgment J. Michael Byrne of the Los Angeles County Superior Court ordered Ms. Powell to pay sanctions of $3,500 (see attached exh. "J"). Ms. Powell sent instructions on April 22, 1996, to deduct those sanctions from the escrow account (see attached exh. "K"). On April 30, 1996, Patrick D. Dolan of Baker & McKenzie confirmed that the $3,500 would be deducted from the remaining escrow funds (see attached exh. "L").

10. On or about December 9, 1996, a Notice of Entry of Order of Dismissal, including Costs, was served on Ms. Powell (see attached exh. "M"). On or about December 10, 1996, the Notice of Entry of Order of Dismissal, including Costs, was transmitted to Ms. Powell requesting directions for how the costs were to be paid (see attached exh. "N") On or about December 31, 1996, Ms. Powell responded

with instructions to deduct the $1,702.00 in costs from the remaining escrow funds (see attached exh. "O")

11. After the deductions for the levies, the amounts requested by Ms. Powell and the disbursements for costs and sanctions, there remains in Escrow Account NO. 805855-24 $15,304.31.

I declare under penalty of perjury under the laws of the State of California that the statements above are true and correct, and that this Declaration is executed this 9th day of June, 1997, at San Diego, California.

_____(signed)__
Barbara L. Pace

"ATTACHED EXHIBIT A": DISBURSEMENT SHEET

DISBURSEMENT SHEET DATE 01/09/92

ESCROW NUM. 00803855 ORDER NUM. 803855
DISB. BANK: 960

BUYER: FRANK BOONE, JR. and SHERRIE F. BOONE
SELLER: PATRICIA H. POWELL
BARBARA J. HENRICKS

PROPERTY: 1062 Angelus Ave, San Diego, CA.

RECEIPTS

R 0031 1/07/92 BOONE	12,600.00
R 0097 1/08/92 HOMEFED BANK	115,314.49
R 0486 10/23/91 FRANK BOONE	500.00
TOTAL RECEIPTS	128,414.49

DISBURSEMENTS		
1/09/92 Frank Boone, Jr. and Sherrie F. Boone, refund due buyer	262.59	
CHECK TOTAL		262.59
PATRICIA H. POWELL		
Net proceeds to seller	54,742.42	
CHECK TOTAL		54,742.42
1/09/92 Fire Insurance Exchange		
Hazard Insurance Premium	401.00	
CHECK TOTAL		401.00
1/09/92 Bonita Pest Control	450.00	
CHECK TOTAL		450.00
01/09/92 Weyerhaeuser Mtg. Co.		
Loan Balance #740849	70,015.46	
Interest 1/09/92-1/11/92	38.26	
Interest to 1/09/92	153.46	
Interest fee	10.00	
Fax fee	15.00	
CHECK TOTAL		70,232.16
0003676 01/09/92 Chicago Title Co.		
Settlement or Closing Fee	854.00	
Document Preparation	100.00	
Title Insurance	976.00	
Chicago Title Co.	14.00	
Chicago Title Co.	75.00	
Recording Fees	29.00	
City/County Tax/Stamps	278.30	
CHECK TOTAL		2,326.30
TOTAL DISBURSEMENTS		128.414.49
BALANCE		0.00

APPENDIX J: LETTER ON BAKER & MCKENZIE LETTERHEAD, Dated 30 April 1996

BAKER & MCKENZIE
Attorneys At Law
...
101 West Broadway, San Diego, CA

PATRICK D. DOLAN
(619) 235-7770

April 30, 1996

Patricia H. Powell, Esq.
320 Channing Way, No. 136
San Rafael, CA 94901

Re: Henricks v. Chicago Title, et al.
Los Angeles County Superior court, Northeast District, Pasadena Case No. GC016003

Dear Ms. Powell;

We are in receipt of your letter dated April 22, 1996. Pursuant to your request in that correspondence, Chicago Title will deduct the $3,500 monetary sanction from the funds remaining in escrow.

However, your letter of April 22, 1996 is rather misleading, contradicts prior facts, and must be cleared up. You wrote that Chicago Title never disbursed the proceeds of escrow to you and Ms. Henricks. Please note and recall that in your letter dated January 26, 1992, (copy enclosed), the escrow proceeds were disbursed to you and Ms. Henricks but these

proceeds were returned to Chicago Title by you. As you know, when escrow was closing in January 1992, the total proceeds which would have gone to you and Ms. Henricks was $54,742.42. Prior to actual closing, Chicago Title disbursed $11,988.16 pursuant to a levy from the San Diego County Marshall on January 14, 1992. That left $42,754.36 in escrow. Thereafter, in an April 26 letter to Chicago Title (copy enclosed), you requested that Chicago Title disburse $12,244.55 to you from the escrow proceeds, which Chicago Title did. That left $30,509.71 in escrow. Thereafter, on July 28, 1992, the San Diego County Marshall again levied on the escrow for $10,003.05, leaving $20,506.21 in the account. after deducting the $3,500 sanctions payable to Chicago Title, as you requested, there will remain $17,006.21 in the escrow account.

BAKER & MCKENZIE
Patricia H. Powell, Esq.
April 30, 1996

Please notify us if you and your client now wish Chicago Title to send the remaining amount.

Sincerely,

BAKER & MCKENZIE
(signed)
Patrick Dolan

cc: Michael Dullea, Esq.

APPENDIX K: LETTER ON CHICAGO TITLE INSURANCE COMPANY LETTERHEAD DATED JULY 05, 2001

CHICAGO TITLE INSURANCE COMPANY

July 05, 2001

Patricia H. Powell
111A Oliva Court
Novato, California 94947

Re: Powell v Allegheny Corp. et al.

Dear Ms. Powell:

Your letter of June 19, 2001, to Mark Sarni has been referred to me for response. As you are aware Chicago title has taken a judgement [sic] against you in the case of Powell v. Allegheny [sic] corp. et al. the amount owing on that judgment is approximately $54,400.

To recover the funds owing on the judgement [sic], Chicago has levied on the $17,000 that was in your escrow account and has taken as a partial payment of your debt. As to the remaining balance, if you would like to contact me regarding payment arrangements I will be happy to discuss the matter with you. If I do not hear from you then Chicago will continue to look for assets upon which to levy.

Sincerely,
(signed)
W. Dean Cloud
Vice President and
Associate Counsel

APPENDIX L: LETTER CHICAGO TITLE COMPANY

CHICAGO TITLE COMPANY

June 24, 2002

Patricia Powell
111A Oliva Court
Novato, California 94947

re: Powell v. Chicago 1-4830

Dear Ms. Powell:

Enclosed please find the opposition papers which I intend to file to your motion, which you have set to be heard on July 18, 2002. Since you are seeking to impose criminal penalties against Chicago under the Penal Code, I think you should be aware that Penal Code violations can only be prosecuted by the district Attorney's office. Your motion is both spiteful and frivolous and its chances of success are nil. I therefore encourage you to take the motion off calendar.

If you proceed with this motion I will have no alternative but to file a 128.7 motion for sanctions and to also file a motion for a determination that you are a vexatious litigant. I am sure you recall that the $71,000 judgment obtained by Chicago against you was in part a result of pursuing CCP 128.7 sanctions. Once I am able to get a sanctions award I will then proceed to again levy against your Redondo Beach condominium. This is not a cycle that I am anxious to pursue. I strongly urge you to drop this litigation.

Sincerely,
(signed)
W. Dean Cloud

APPENDIX M:
NEWSTORY: DAILY NEW [VAN NUYS]
WEDNESDAY, OCT. 8, 2002, BUSINESS

Big title firms reach settlement

A $50 million settlement was reached in a consumer protection lawsuit against a half dozen major title companies and their affiliates, state Attorney General Bill Lockyer announced Tuesday.

Agreeing to the settlement are Fidelity National Title Insurance Co., Chicago Title Insurance, First American Title Insurance, Commonwealth Land Title Insurance, Lawyers Title Insurance and Stewart Title of California Inc. and their various parent, subsidiary and affiliated companies.

The companies were accused of deceiving California consumers with hidden fees and costs while providing routine residential escrow and title services, and failing to pass on the their customers benefits that were provided by financial institutions based on agreements to deposit consumer escrow funds in their banks.

The companies did not admit to any liability or wrongdoing under the settlement. "Buying a home is a dream come true for many California families, but negotiating and completing the complex financial transactions can become a nightmare of details. These settlements will ensure that potential homeowners won't be taken advantage of by the professionals they rely on to fulfill their dreams." Lockyer said.

Under the stipulated judgments, signed by Sacramento Superior Court Judge Loren E. McMaster, the companies

will pay more than $40 million in refunds to eligible customers who bought, sold or refinanced residential property between May 19, 1995, and Tuesday, according to the Attorney General's Office.

Notices regarding distribution of the refunds will be published in newspapers statewide, and it is estimated that the refund distribution will begin in six months, officials said.

Along with the refunds, the companies also will pay a total of $4.45 million in civil penalties and $2.35 million to the consumer Protection Trust Fund to assist in future prosecutions of other consumer protection matters.

The companies also agreed to pay an additional amount for fees and costs associated with the settlement.

The judgment also includes a variety of injunctive provisions barring the companies from continuing to engage in the practices that led to the lawsuit, according to Lockyer's office.

APPENDIX N:
NEWSTORY: DAILY NEWS [VAN NUYS]
FRIDAY, OCTOBER 15, 1999

Title firm given stiff penalty

First American to pay $2.5 million
By Gregory J. Wilcox (staff writer)

Glendale - In the largest penalty of its kind to date, California's biggest title insurance company will pay $2.5 million to settle charges it made illegal kickbacks to real estate agents, State Insurance Commissioner Chuck Quackenbush said Thursday.

Santa Ana-based First American Title Co. will pay $1.25 million in fines and penalties and $1.25 million to a consumer awareness program.

The most egregious violations occurred in the company's Los Angeles office, which was not allowed to take any new orders on Monday as part of the penalty. It still was able to service existing orders and customers.

.....

This is the eighth and by far the largest penalty levied upon a title company since the state began an aggressive policing of the industry in 1996l Earlier this year Chicago Title Co. was fined $235.000.

"It's because of the egregious inducements," insurance department spokeswoman Dana Spurrier said of the harsh penalty.

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"We're sending a very strong message to the title insurance industry."

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